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OFFICE OF PETITIONS

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In re Patent No. 7,597,886 : DECISION ON REQUEST
Yu et al. : FOR
Issue Date: October 6, 2009 : RECONSIDERATION OF
Application No. 09/899,059 : PATENT TERM ADJUSTMENT
Filed: July 6, 2001 : and
Atty Docket No. 075977-0122 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 4, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand and thirty-five (2035) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, eight hundred and sixty-one (1861) days is **GRANTED to the extent indicated herein.**

Petitioner has indicated that this patent is not subject to a terminal disclaimer.¹

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009 and a notice of allowance was subsequently mailed on June 23, 2009. The 33 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on June 23, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 33 days are excluded.

¹ Petition, page 2.

Moreover, it is noted that the Office improperly calculated the period of applicant delay pursuant to 37 C.F.R. § 1.704(c)(10), which states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

- (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
- (ii) Four months; and

A notice of allowance was mailed on June 23, 2009. A Rule 1.312 amendment was subsequently received on July 23, 2009, and a response to the Rule 1.312 amendment was mailed on July 29, 2009. This constitutes seven days of applicant delay (the Office improperly calculated the delay as terminating with the issuance of this patent on October 6, 2009, and accorded a reduction of 76 days).

The 76-day reduction has been removed, and a reduction of seven days has been entered.

Petitioner has asserted that the 76-day reduction is improper as the supplemental declaration that was filed on July 23, 2009 was requested by the Examiner,² however this reduction is properly associated with the Rule 1.312 amendment,³ and not the concurrently submitted supplemental declaration. As such, a seven-day reduction has been assessed.

Regarding the 1087 days of Office delay associated with the mailing of the restriction requirement on February 14, 2007, the Office has determined that the entire period overlaps with the period of B-delay.

² Petition, page 2.

³ Both an amendment to the specification and a supplemental declaration were concurrently filed on July 23, 2009.

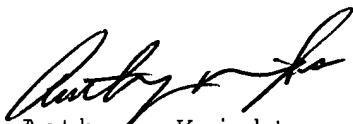
As such, the patent term adjustment is increased by 1861 days.

The Office acknowledges submission of the \$200.00 fee. No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, eight hundred and sixty-one (1861) days**.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanowski at (571) 272-3225.



Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,597,886 B2

DATED : October 6, 2009

DRAFT

INVENTOR(S) : Yu et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1443 days

Delete the phrase "by 1443 days" and insert – by 1861 days--